

ESTTA Tracking number: **ESTTA678011**

Filing date: **06/13/2015**

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD


Proceeding	91221892
Party	Defendant Lanikai Brewing Company, LLC
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Signature	/Leah M. Reyes/
Date	06/13/2015
Attachments	Answer to Notice of Opposition.2015-6-13.pdf(216369 bytes)

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

In the Matter of:
Trademark Application Serial No. 86234361
Published in the *Official Gazette*
March 17, 2015

HONOLULU BEERWORKS LLC,)	Opposition No. 91221892
)	
Opposer,)	APPLICANT LANIKAI BREWING
)	COMPANY, LLC'S ANSWER TO NOTICE
vs.)	OF OPPOSITION FILED MAY 12, 2015;
)	and CERTIFICATE OF SERVICE
LANIKAI BREWING COMPANY, LLC,)	
)	
Applicant.)	
)	
)	
)	

APPLICANT LANIKAI BREWING COMPANY, LLC'S
ANSWER TO NOTICE OF OPPOSITION FILED MAY 12, 2015

Applicant LANIKAI BREWING COMPANY, LLC, (hereinafter `Applicant LANIKAI BREWING_) for its answer to the Notice of Opposition filed by HONOLULU BEERWORKS LLC (hereinafter `Opposer HONOLULU BEERWORKS_) against application for registration of Applicant LANIKAI BREWING's trademark , Serial No. 86234361 filed March 27, 2014, and published in the *Official Gazette* on March 17, 2015, pleads and avers as follows:

1. In response to Paragraph 1 of the Notice of Opposition, Applicant LANIKAI BREWING is without knowledge or information sufficient to form a belief as to the truth of the allegations contained therein, and therefore denies the same and leaves Opposer HONOLULU BEERWORKS to its proof.

2. In response to Paragraph 2 of the Notice of Opposition, Applicant LANIKAI BREWING is without knowledge or information sufficient to form a belief as to the truth of the allegations contained therein, and therefore denies the same and leaves Opposer HONOLULU BEERWORKS to its proof.

3. The allegations of Paragraph 3 of the Notice of Opposition are admitted.

4. The allegations of Paragraph 4 of the Notice of Opposition are admitted.

5. The allegations of Paragraph 5 of the Notice of Opposition are admitted.

6. In response to Paragraph 6 of the Notice of Opposition, Applicant LANIKAI BREWING admits that an Examiner's Amendment was filed on January 16, 2015, by which the following disclaimer was entered in Applicant LANIKAI BREWING's Application:

No claim is made to the exclusive right to use "Brewing Company" apart from the mark as shown.

The remaining allegations of Paragraph 6 are denied.

7. The allegations of Paragraph 7 of the Notice of Opposition are admitted.


8. In response to Paragraph 8 of the Notice of Opposition, Applicant LANIKAI BREWING is without knowledge or information sufficient to form a belief as to the truth of the allegations contained therein, and therefore denies the same and leaves Opposer HONOLULU BEERWORKS to its proof.

9. The allegations of Paragraph 9 of the Notice of Opposition are denied.

10. In response to Paragraph 10 of the Notice of Opposition, Applicant LANIKAI BREWING is without knowledge or information sufficient to form a belief as to the truth of the allegations contained therein, and therefore denies the same and leaves Opposer HONOLULU BEERWORKS to its proof.

11. The allegations of Paragraph 11 of the Notice of Opposition are denied.

12. The allegations of Paragraph 12 of the Notice of Opposition are denied.
13. The allegations of Paragraph 13 of the Notice of Opposition are denied.
14. In response to Paragraph 14 of the Notice of Opposition, Applicant

LANIKAI BREWING admits that if its Application is granted, and its mark  registered, Applicant LANIKAI BREWING would obtain a *prima facie* exclusive right to use of its mark in the U.S. Applicant LANIKAI BREWING denies all other allegations contained in Paragraph 14.

15. The allegations of Paragraph 15 of the Notice of Opposition are denied.

16. In response to the allegations of Paragraph 16 of the Notice of Opposition, Applicant LANIKAI BREWING admits that Opposer's Hawaii registrations purport to claim a certain date of first use, but otherwise is without knowledge or information sufficient to form a belief as to the truth of the allegations of Opposer's priority of trademark usage contained therein, and therefore denies the same and leaves Opposer HONOLULU BEERWORKS to its proof.

17. The allegations of Paragraph 17 of the Notice of Opposition are admitted.

18. The allegations of Paragraph 18 of the Notice of Opposition are denied.

19. The allegations of Paragraph 19 of the Notice of Opposition are denied.

20. In response to Paragraph 20 of the Notice of Opposition, Applicant LANIKAI BREWING is without knowledge or information sufficient to admit the authenticity, truth and accuracy of Exhibits 'B_', 'C_' and 'D_', and therefore denies the allegations in Paragraph 20 and leaves Opposer HONOLULU BEERWORKS to its proof.


21. All paragraphs not expressly referred to herein are denied.

AFFIRMATIVE DEFENSES


First Affirmative Defense

22. As to the claim in Paragraph 9 based on alleged similarity of the Opposer's trademark to Applicant's trademark, Opposer HONOLULU BEERWORKS fails to state a claim upon which relief can be granted.

Second Affirmative Defense

23. As to the claim in Paragraph 18 based on alleged geographical descriptiveness or misdescriptiveness of the Applicant's trademark, the U.S. Trademark Office has already accepted the showing that Applicant LANIKAI BREWING's mark  is not primarily geographically descriptive and is distinctive.

Third Affirmative Defense

24. As to the claim in Paragraph 12 based on likelihood of confusion of the Opposer's trademark with Applicant's trademark, Applicant LANIKAI BREWING's mark  is not likely to cause confusion, or to cause mistake, or to deceive as to the affiliation, connection, or association of Applicant LANIKAI BREWING with Opposer HONOLULU BEERWORKS, or as to the origin, sponsorship, or approval of Applicant LANIKAI BREWING's good, services or commercial activities by Opposer HONOLULU BEERWORKS.

Fourth Affirmative Defense


25. As to the claim in Paragraph 12 based on likelihood of confusion of the Opposer's trademark with Applicant's trademark, there is no likelihood of confusion, mistake or

deception, because *inter alia*, Applicant LANIKAI BREWING's mark  and the pleaded

mark of Opposer HONOLULU BEERWORKS  are not confusingly similar.


Fifth Affirmative Defense

26. As to the claim in Paragraph 12 based on likelihood of confusion of the Opposer's trademark with Applicant's trademark, Applicant LANIKAI BREWING's use of its

mark  in commercial advertising or promotion does not misrepresent the nature, characteristics, qualities, or geographic origin of Applicant LANIKAI BREWING's or Opposer HONOLULU BEERWORKS's goods, services, or commercial activities.

Sixth Affirmative Defense

27. As to the claim in Paragraph 12 based on likelihood of confusion of the Opposer's trademark with Applicant's trademark, as a result of Applicant LANIKAI BREWING's

continuous use of its mark  since the time of its adoption thereof, Applicant LANIKAI BREWING's mark has developed significant goodwill among the consuming public and consumer acceptance of the services offered by Applicant LANIKAI BREWING in conjunction with the mark. Such good will and widespread usage has caused the mark to acquire distinctiveness with respect to Applicant LANIKAI BREWING, and caused the mark to become a valuable asset of Applicant LANIKAI BREWING.

Seventh Affirmative Defense

28. As to the claim in Paragraph 14 based on dilution of the Opposer's



trademark due to Applicant's trademark, Opposer HONOLULU BEERWORKS' mark

is neither alleged to be nor is famous, as required in Section 2(f), second paragraph, of the Lanham Act, 15 U.S.C. Section 1052(f), and Section 43(c)(1) of the Lanham Act, 15 U.S.C. Section 1125(c)(1).

Eighth Affirmative Defense

29. As to the claim in Paragraph 14 based on dilution of the Opposer's

trademark due to Applicant's trademark, there is no likelihood of dilution of Opposer HONOLULU BEERWORKS' mark by tarnishment as Applicant LANIKAI BREWING's mark is associated with high quality craft beers and products, thus goods sold under Applicant LANIKAI BREWING's mark would not injure the reputation of Opposer HONOLULU BEERWORKS.

Ninth Affirmative Defense

30. As to the claim in Paragraph 14 based on dilution of the Opposer's

trademark due to Applicant's trademark, there is no likelihood of dilution by blurring as Opposer



HONOLULU BEERWORKS' mark

and LANIKAI BREWING's mark



are not

sufficiently similar and Applicant LANIKAI BREWING has not intended any association with Opposer HONOLULU BEERWORKS' mark; and upon information and belief, ordinary prospective purchasers of Applicant LANIKAI BREWING's products do not associate them with Opposer HONOLULU BEERWORKS' products or HONOLULU BEERWORKS' mark.

Tenth Affirmative Defense

31. As to the claim in Paragraph 12 based on likelihood of confusion of the Opposer's trademark with Applicant's trademark, there has been no confusion among consumers as to Opposer HONOLULU BEERWORKS's affiliation, approval, licensing or and/or sponsorship of Applicant LANIKAI BREWING's products.

Eleventh Affirmative Defense

32. As to the claim in Paragraph 12 based on likelihood of confusion of the Opposer's trademark with Applicant's trademark, there has been no damage or injury to Opposer HONOLULU BEERWORKS's good will and reputation.

Twelfth Affirmative Defense

33. As to the claim in Paragraph 18 based on alleged geographical descriptiveness or misdescriptiveness of the Applicant's trademark, Opposer HONOLULU BEERWORKS has failed to allege an abuse of discretion by the United States Trademark Office's (USTMO) in determining that the term 'Lanikai' as used in Applicant LANIKAI BREWING's mark is not primarily geographically descriptive, but is an expressive term interpreted to mean 'heavenly sea.'

WHEREFORE, LANIKAI BREWING requests that the Trademark Trial and Appeal Board dismiss the Notice of Opposition and grant all other appropriate relief to Applicant LANIKAI BREWING as it deems just.

DATED: Honolulu, Hawaii, June 13, 2015.

/s/ Leah M. Reyes

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LANIKAI BREWING COMPANY, LLC

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Opposer,)	CERTIFICATE OF SERVICE
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vs.)	
)	
LANIKAI BREWING COMPANY, LLC,)	
)	
Applicant.)	
)	
_____)	

CERTIFICATE OF SERVICE

I hereby certify that a copy of *Applicant Lanikai Brewing Company, LLC's Answer to Notice of Opposition Filed May 12, 2015*, shall be served by hand delivery to the following on
June 15, 2015:

COLIN O. MIWA, ESQ.
CADES SCHUTTE
1000 Bishop Street, Suite 1200
Honolulu, Hawaii 96813

Attorney for Opposer
HONOLULU BEERWORKS LLC

DATED: Honolulu, Hawaii, June 13, 2015.

/s/ Leah M. Reyes

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